

## First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE ENROLLED ACT No. 493

AN ACT to amend the Indiana Code concerning human services.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 12-7-2-1.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1.3. "Activities of daily living", for purposes of IC 12-10-10 **and IC 12-10-11.5**, has the meaning set forth in IC 12-10-10-1.5.

SECTION 2. IC 12-7-2-24.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 24.8. "Caretaker", for purposes of IC 12-10.5, has the meaning set forth in IC 12-10.5-1-1.**

SECTION 3. IC 12-7-2-118.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 118.8. "Institution", for purposes of IC 12-10-11.5, has the meaning set forth in IC 12-10-11.5-1.**

SECTION 4. IC 12-7-2-180.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 180.1. "Special needs", for purposes of IC 12-10.5, has the meaning set forth in IC 12-10.5-1-2.**

SECTION 5. IC 12-10-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

**Chapter 11.5. Long Term Care Services**

**Sec. 1. As used in this chapter, "institution" means any of the following:**

**(1) A health facility licensed under IC 16-28.**

**(2) An intermediate care facility for the mentally retarded.**

**Sec. 2. (a) This chapter is subject to funding available to the office of the secretary of family and social services.**

**(b) The secretary and the director of the state budget agency are responsible for ensuring that the cost of the services provided under this chapter does not exceed the total amount of funding, including state and federal funds, that is made available by the budget agency for the program established under this chapter to provide long term care, including home and community based services.**

**Sec. 3. The office of the secretary of family and social services shall establish a comprehensive program of home and community based long term care services to provide eligible individuals with care that is not more costly than services provided to similarly situated individuals who reside in institutions.**

**Sec. 4. An individual who has resided in the state for at least ninety (90) days shall be eligible for the home and community based long term care services program if the individual:**

**(1) participates in, or has been determined to be eligible for, the community and home options to institutional care for the elderly and disabled program established by IC 12-10-10-6; or**

(2) meets the following requirements, which must meet the general eligibility standards for an individual receiving services under a home and community based Medicaid waiver:

- (A) Has an income of not more than three hundred percent (300%) of the federal Supplemental Security Income level.
- (B) Is unable to perform at least three (3) activities of daily living determined by an assessment conducted by an area agency on aging case manager or any other agency the state has contracted with to perform assessments.
- (C) Is at risk of being placed in an institution or is currently residing in an institution and has been determined to be eligible for services under IC 12-10-10 or under a home and community based Medicaid waiver.

**Sec. 5.** The state shall provide access to the following long term care services that are appropriate and needed for an individual who is eligible for these services under this chapter:

(1) Any home and community based service that is available through:

- (A) the community and home options to institutional care for the elderly and disabled program; or
- (B) any state Medicaid waiver.
- (2) Personal care services.
- (3) Self-directed care.
- (4) Assisted living.
- (5) Adult foster care.
- (6) Adult day care services.
- (7) The provision of durable medical equipment or devices.
- (8) Housing modifications.
- (9) Adaptive medical equipment and devices.
- (10) Adaptive nonmedical equipment and devices.
- (11) Any other service that is necessary to maintain an individual in a home and community based setting.

**Sec. 6. (a)** The office of the secretary of family and social services shall annually determine any state savings generated by home and community based services under this chapter by reducing the use of institutional care.

(b) The secretary shall annually report to the governor, the budget agency, the budget committee, the select commission on Medicaid oversight, and the executive director of the legislative services agency the savings determined under subsection (a).

(c) Savings determined under subsection (a) may be used to fund the state's share of additional home and community based Medicaid waiver slots.

**Sec. 7.** When possible, the office of the secretary of family and social services shall make use of volunteers and volunteer groups, including faith based groups, when executing its duties under this chapter.

SECTION 6. IC 12-10.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

## **ARTICLE 10.5. RESPITE CARE SERVICES**

### **Chapter 1. Caretaker Support Program**

**Sec. 1.** As used in this chapter, "caretaker" means an individual who:

- (1) provides ongoing care for an individual who:
  - (A) is at least eighteen (18) years of age; and
  - (B) has special needs; and
- (2) does not receive money for the care provided under subdivision (1).

**Sec. 2.** As used in this chapter, "special needs" means any of the

following:

- (1) Alzheimer's disease or any related disorder.
- (2) Inability to perform at least two (2) activities of daily living.
- (3) Any other condition that the division determines by rule should be covered by this article.

**Sec. 3.** The caretaker support program is established.

**Sec. 4. (a)** The division of disability, aging, and rehabilitative services established by IC 12-9-1-1 shall administer the caretaker support program established under this chapter.

(b) The division of disability, aging, and rehabilitative services shall do the following:

- (1) Adopt rules under IC 4-22-2 for the coordination and administration of the caretaker support program.
- (2) Administer any money for the caretaker support program that is appropriated by the general assembly.

**Sec. 5. An individual who is at least sixty-five (65) years of age and:**

**(1) a caretaker; or**

**(2) an individual with special needs being taken care of by a caretaker;**

**is eligible for the caretaker support program.**

**Sec. 6. Caretaker support program services include the following services administered by the area agencies on aging:**

**(1) Information for caretakers about available services.**

**(2) Assistance to caretakers in gaining access to the services.**

**(3) Individual counseling, organization of support groups, and caretaker training to assist caretakers in making decisions and solving problems in the individual's role as caretaker.**

**(4) Respite care to offer caretakers temporary relief from caretaker responsibilities.**

**Sec. 7. The division shall develop and implement a client cost share formula for respite care services.**

**Sec. 8. When possible, the division shall make use of volunteers and volunteer groups, including faith based groups, when executing its duties under this article.**

## **Chapter 2. Continuum of Care**

**Sec. 1. The division shall:**

**(1) provide standards for the training of; and**

**(2) promote best practices for;**

**continuum of care program providers.**

**Sec. 2. The division may adopt rules under IC 4-22-2 necessary**

**to carry out this chapter.**

**SECTION 7. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "board" refers to the community and home options to institutional care for the elderly and disabled board established by IC 12-10-11-1.**

**(b) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.**

**(c) As used in this SECTION, "waiver" refers to the aged and disabled Medicaid waiver.**

**(d) Before September 1, 2003, the office shall discuss and review any amendment to the waiver required under this SECTION with the board.**

**(e) Before October 1, 2003, the office shall apply to the United States Department of Health and Human Services to amend the waiver to include in the waiver any service that is offered under the community and home options to institutional care for the elderly and disabled (CHOICE) program established by IC 12-10-10-6. A service provided under this subsection may not be more restrictive than the corresponding service provided under IC 12-10-10.**

**(f) The office may not implement the waiver until the office files an affidavit with the governor attesting that the amendment to the waiver applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver is approved.**

**(g) If the office receives approval for the amendment to the waiver under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (f), the office shall implement the waiver not more than sixty (60) days after the governor receives the affidavit.**

**(h) Before January 1, 2004, the office shall meet with the board to discuss any changes to other state Medicaid waivers that are necessary to provide services that may not be more restrictive than the services provided under the CHOICE program. The office shall recommend the changes determined necessary by this subsection to the governor.**

**(i) The office may adopt rules under IC 4-22-2 necessary to implement this SECTION.**

**(j) This SECTION expires July 1, 2008.**

**SECTION 8. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.**

**(b) As used in this SECTION, "waiver" refers to a Medicaid waiver approved by the United States Department of Health and Human Services (42 U.S.C. 1396 et seq.).**

**(c) Before September 1, 2003, the office shall seek approval from the United States Department of Health and Human Services to amend the waiver to modify income eligibility requirements to include spousal impoverishment protection provisions under 42 U.S.C. 1396r-5 that are at least at the level of the spousal impoverishment protections afforded to individuals who reside in health facilities licensed under IC 16-28. The office also shall seek approval for twenty thousand (20,000) additional waiver slots at no additional cost to the**

state.

(d) The office may not implement the waiver amendments until the office files an affidavit with the governor attesting that the federal waiver amendment applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver amendment is approved.

(e) If the United States Department of Health and Human Services approves the waiver amendment requested under this SECTION and the governor receives the affidavit filed under subsection (d), the office shall implement the waiver amendments not more than sixty (60) days after the governor receives the affidavit.

(f) The office may adopt rules under IC 4-22-2 necessary to implement this SECTION.

(g) This SECTION expires July 1, 2008.

SECTION 9. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(b) An individual who receives Medicaid services through a Medicaid waiver shall receive the following:

(1) The development of a care plan addressing the individual's needs.

(2) Advocacy on behalf of the individual's interests.

(3) The monitoring of the quality of community and home care services provided to the individual.

(4) Information and referral services on community and home care services if the individual is eligible for these services.

(c) The use by or on behalf of an individual receiving Medicaid waiver services of any of the following services or devices does not make the individual ineligible for services under a Medicaid

waiver:

(1) Skilled nursing assistance.

(2) Supervised community and home care services, including skilled nursing supervision.

(3) Adaptive medical equipment and devices.

(4) Adaptive nonmedical equipment and devices.

(d) If necessary to implement this SECTION, the office shall apply to the United States Department of Health and Human Services for an amendment to a Medicaid waiver to comply with this SECTION.

(e) If the office applies for a waiver amendment under subsection (d), the office may not implement the waiver amendment until the office files an affidavit with the governor attesting that the federal waiver applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver is approved.

(f) If the office receives a waiver amendment under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (e), the office shall implement the waiver not more than sixty (60) days after the governor receives the affidavit.

(g) The office may adopt rules under IC 4-22-2 necessary to implement this SECTION.

(h) This SECTION expires July 1, 2005.

SECTION 10. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "office" refers to the office of the secretary of family and social services established by IC 12-8-1-1.

(b) Before July 1, 2004, the office shall have self-directed care options services available for:

(1) the community and home options to institutional care for the elderly and disabled program established by IC 12-10-10-6; and

(2) a Medicaid waiver;

for an eligible individual who chooses self-directed care services.

(c) This SECTION expires December 31, 2006.

SECTION 11. [EFFECTIVE JULY 1, 2003] (a) The Indiana health facility financing authority created by IC 5-1-16-2(a) is encouraged to work with for profit health facilities and nonprofit organizations that are operating under a joint agreement to convert health facility beds to less intensive care beds through the issuance, sale, or delivery of a bond under IC 5-1-16.

(b) This SECTION expires July 1, 2005.

SECTION 12. [EFFECTIVE UPON PASSAGE] (a) Before December 31, 2003, the secretary of family and social services (IC 12-8-1-2) shall discuss with the community and home options to institutional care for the elderly and disabled (CHOICE) board established by IC 12-10-11-1, and with any other agency, volunteer, volunteer group, faith based group, or individual that the secretary considers appropriate, the establishment of a system of integrated services, including:

- (1) transportation;
- (2) housing;
- (3) education; and
- (4) workforce development;

to enhance the viability and availability of home and community based care.

(b) The secretary shall report to the governor and the budget committee any recommendations for funding these services.

(c) This SECTION expires December 31, 2004.

SECTION 13. [EFFECTIVE UPON PASSAGE] (a) Before December 31, 2003, the office of the secretary of family and social services (IC 12-8-1-2) and the area agencies on aging shall calculate the number of individuals who may reasonably need care under this act, including the following individuals:

(1) An individual receiving home and community based services under the community and home options to institutional care for the elderly and disabled (CHOICE) program established by IC 12-10-10-6.

(2) An individual on the waiting list to receive home and community based services under the CHOICE program.

(3) An individual receiving home and community based services under a state Medicaid waiver.

(4) An individual on a Medicaid waiver waiting list to receive home and community based services.

(5) An individual who receives assisted living services or adult foster care services under a Medicaid waiver.

(6) An individual residing in a health facility licensed under IC 16-28 who may be appropriately served in a home and community based setting.

(b) Before December 31, 2003, the secretary shall report the findings under subsection (a) to the governor, the budget committee, and the budget agency.

(c) This SECTION expires December 31, 2004.

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SECTION 14. [EFFECTIVE UPON PASSAGE] (a) Beginning July 1, 2003, the office of Medicaid policy and planning shall implement a policy that allows the amount of Medicaid funds necessary to provide for services to follow an individual who is transferring from institutional care to Medicaid home and community based care. The amount may not exceed the amount that would have been spent on the individual if the individual had stayed in institutional care.

(b) This SECTION expires July 1, 2005.

SECTION 15. An emergency is declared for this act.

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SEA 493 \_ Concur (Reenrolled)

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